



JUDICIARY OF
ENGLAND AND WALES

The Queen

-v-

Kandyce Downer

Birmingham Crown Court

Sentencing remarks of Mrs Justice Patterson DBE

4th May 2016

Kandyce Downer, you have been found guilty by unanimous verdict of a jury of the murder of Keegan Downer, an 18 month old baby for whom you the responsible parent under a Special Guardianship Order.

Shi-Anne Downer, later renamed Keegan Downer, was born on 9 March 2014. She was the natural child of Claire Maybury and David Downer, a cousin of your former husband. Claire Maybury was a drug addict and unable to care for her new baby. You had been interested in caring for the baby's elder sister but she had become well settled with her foster parents. The result of your interest though was that social services had your particulars on file when the new baby was born. They contacted you to see whether you would be interested in caring for the newborn girl. You indicated a willingness to do so and, after a series of contact visits and stays, the baby came to live as a member of your family on 31 January 2015 after a Special Guardianship Order in your favour was confirmed.

Until that time, Keegan had been cared for by a loving and capable foster mother, Jane Murray. Under her care Keegan had flourished. She had met all developmental milestones. She put on weight so that on 26 January 2015 she was 7.65kg just under the 25th centile. She was sitting unaided, she was babbling and smiling. During the trial a short video of Keegan

pushing her baby walker in early January 2015, looking very pleased with herself was played. In short, she was happy and thriving.

When Keegan arrived at your home at 7 Beckbury Road you had separated from your husband, Negus Downer, but had established yourself with your four children aged 17, 11, 8 and 4 in a new environment. All witnesses who spoke about your home and your care of your natural children were unanimous: you were a loving and caring mother. All your children were well behaved, immaculately turned out and happy. The house and garden had been improved by yourself and your new partner, Christian Nunn, immeasurably. Keegan shared a bedroom with her two sisters and the boys had separate bedrooms.

Until at least 5 June 2015 there were no problems or concerns. Keegan attended nursery and was progressing well. You were undertaking a three year course at university. The other children were at college, school and nursery respectively and saw their natural father usually once during the week and alternate weekends. All seemed to have settled into a contented routine.

5 June is significant as that is when Keegan stopped attending the Village Green Nursery where she was subject to public oversight. Your university term had finished and you were at home and able to care for Keegan until the other children broke up on 21 July.

On 15 June you discovered that you were pregnant with the child of your new partner. It was not planned but you say that both of you were happy. It had a complication though, in that you had hypertension. Your account that those symptoms caused you to be increasingly sick and exhausted, so that you had to retire to bed and effectively abdicate responsibility for your children, leaving their welfare in the hands of your eldest son, has been rejected by the jury's verdict.

You were able to take the family on a week's holiday to Spain at the end of July and host a birthday barbeque on 8 August. You managed also to take both daughters shopping in the afternoon of 4 September to get dresses, last minute requirements for the school term and a wedding present for the wedding that you, your eldest daughter and Keegan were due to attend the following day. Your 8 year old daughter, Krystal, was to be a flower girl. On your return after a couple of hours shopping that afternoon the other children went with their father for the weekend leaving you, on your own account, with the sole responsibility for Keegan and Krystal.

No sooner had the other children gone then you went out with Krystal to the dress rehearsal for the wedding leaving Keegan alone in her cot in the house. Nearly 2 and a half hours later you returned. By that time it was evident that Keegan was seriously ill and dying. She had been subjected to what you accept were terrible injuries over the last 2 to 3 months of her life.

Keegan had suffered fractures to her left and right femur. That to her right femur was fully displaced and may have been the subject of re-fracturing. Her right femur was left 1cm shorter than her left. Dr Stanhope, the receiving paediatrician at Birmingham Children's Hospital where Keegan was taken on 5 of September, described the pain level from the fracture as agonising. The displacement was obvious to a lay person. It would be impossible to change a nappy without touching the fracture site. It is possible that the release of fat and bone marrow from those fractures caused a part in Keegan's death.

Keegan had fractures to her ribs on both sides: the 11th, 10th, 9th, 7th and 5th on her right side; and 10th and 7th on her left. They were fractures of varying ages because as the ribs started to heal there was evidence of more recent fracturing; the most recent being within 2 to 5 days of Keegan's death. Professor Mangham, the Consultant Histopathologist, concluded that there had been a series of insults with resultant multiple injuries to Keegan over an extensive time frame. He favoured significantly more than four episodes with the most distant being 1 to 3 months prior to death and the most recent being within 6 to 24 hours. The rib fractures were associated with bone infection, the development of osteomyelitis and empyema. The Pathologist, Mr Hunt, said they were likely to be from a blunt chest injury with a force comparable to a road traffic accident or a hard stamping and kicking.

The diminished and debilitated state of Keegan was due in part to her brain injury. Dr du Plessis, the Neuropathologist, found Keegan's brain to be underdeveloped because of layers of scar tissue built up over a period of time in response to trauma. The trauma here was likely to have been shaking in so vigorous a way that a reasonable person observing would have been forced to intervene and say stop. The bleeds found in the optic nerve sheaths were supportive of Dr du Plessis's view. The result was that Keegan's brain was incarcerated in scar tissue which caused persistent and sustained pressure on it and prevented it from growing. Keegan would have become backward in her development and poor in her responsiveness. The injury was such that Keegan would have regressed from what she had been able to do physically. Her reduced motor skills would have affected her ability to feed. Her nutritional deficiency also would have made her vulnerable to infection.

Not only that, the Paediatric Pathologist, Dr Malcolmson, found that the thymus which has a special role in children and is essential to the proper functioning of the immune system had grown normally and then shrunk as a result of a very severe injury or severe infection. He found a collection of pus of some 10x6cm in the posterior aspect of Keegan's left pleural cavity: that empyema had a connection with the fractures to the left ribs. The pus was most likely to be caused by the presence of staphylococcus aureus which was consistent with the development of septicaemia. There was no natural explanation for the pattern of injuries which Keegan suffered.

At the time of her death the pathologists found in excess of 153 scars and other marks on Keegan's body. Her frenulae had been damaged to such an extent that more than one consultant described those injuries as the most severe of that sort that they had seen in their professional careers. The medical evidence is that the bruising and injuries to Keegan's face, head and frenulae would have been evident to her carers. Those injuries would have been caused by a hard slap, a punch or forcing a feeding bottle into Keegan's mouth.

The immediate cause of Keegan's death was diagnosed by the pathologists as septicaemia, a blood poisoning process as a result of Keegan's injuries to her ribs which caused her heart to stop beating. The presence of empyema and osteomyelitis due to infection and a blunt chest trauma were all cited as causes of her death. At the time of her death Keegan weighed 8.5kg; only 0.4kg more than when she was weighed on 26 January 2015.

Despite Keegan's ill health, which must have been evident to any mother, on 4 September, you proceeded to leave Keegan alone in the house in her cot for just short of 2 and a half hours when you went out with Krystal to the wedding rehearsal and then took Krystal shopping before returning home.

During that night Krystal came to you to alert you to the fact that Keegan was making funny noises. You did nothing.

On the morning of 5 September you left Keegan behind again whilst taking Krystal to the Hyatt Hotel to get ready for the wedding. When you returned you gathered what you thought was incriminating evidence in the form of the old blood and food stained mattress from Keegan's cot, your pyjamas and Keegan's babygro and household rubbish and put them into two black bin bags and drove with them to deposit them close to a skip some distance from your home. All the while Keegan was left alone in her cot. You arrived home at 09.54 and finally, at 09.55, you dialled 999 for help.

It is a horrific tale of callous conduct. At no stage have you shown any hint of remorse. Why you changed from being a loving and caring mother to a brutal attacker of a defenceless child is a mystery. Your relationship with Christian Nunn had foundered after a period of considerable difficulty but that provides no explanation for what can only be described as vicious and unfeeling behaviour.

There is only one sentence that I can pass upon you which is one of life imprisonment.

I have, though, to fix a minimum term that you must serve. I take as a starting point the period of 15 years as your case does not fall within paragraphs 4(1), 5(1) or 5A(1) of Schedule 21 of the Criminal Justice Act 2003. The following statutory aggravating features are present:

- i)** Keegan was vulnerable and defenceless due to her age (paragraph 10(b));
- ii)** Keegan was subjected to a series of brutal assaults over the 3 months or so before her death, resulting in severe mental and physical suffering, as I have set out (paragraph 10(c));
- iii)** Having been appointed as Keegan's primary carer under a Special Guardianship Order, you flagrantly breached that position of trust (paragraph 10(d)).

Other non-statutory aggravating features present are:

- i)** That you made no attempt to seek medical treatment or assistance;
- ii)** The offence was committed in a household where other children were present;
- iii)** The attempt to conceal incriminating evidence by disposing of the mattress, your pyjamas and household rubbish at a time when Keegan was dying;
- iv)** The concealment of Keegan from public scrutiny at a time when her injuries would have been obvious;
- v)** The failure to call 999 until the last moment on 5 September when, again, it was obvious that Keegan was dying.

In mitigation, I take the view that you did not set out with the intention to kill Keegan but the repeated assaults upon her made death, as the outcome of your conduct, increasingly likely with the passage of time.

I take into account also that you are a lady with no previous criminal convictions and, hitherto, had been an exemplary mother. That is evident from the character reference handed into court this morning and from witnesses who spoke to your family life before the events that have brought you to this court. A hardship that you will have to bear as a result of your criminality is not being present to see your children grow up.

The devastating effect of your conduct though is clearly the death of Keegan, an innocent young child. But there are also consequences for those who knew and loved her. That is particularly evident in the Victim Impact Statement of Jane Murray, the foster carer for Keegan in her first months, who has not only attended the trial everyday, but speaks of her shock, her pain and how she has had to take time away from the job which she previously loved of caring for vulnerable children. As she says the lives of the children that she cares for are supposed to continue to improve when they leave her. Tragically, the very opposite happened here.

I have taken into account the Sentencing Note prepared by the Crown and the case of **AG Reference No 011 of 2014** [2014] EWCA Crim 843 which both parties ask me to.

This is a serious case involving the killing of a defenceless child who deserved protection. The initial starting point should be increased to reflect the serious course of violence that was occasioned over the last months of Keegan's life. The case is further aggravated by the abuse of trust and the failure to summon help for Keegan over a protracted period of time. Keegan, therefore, suffered considerably in the last days and months of her life. There is no credit for a guilty plea as the trial was contested.

The mitigation I have set out; you were of good character and did not initially intend to kill Keegan. That factor though is tempered by the continuing nature of the trauma inflicted upon the baby. You have been a good mother to your other children.

Balancing the aggravating and mitigating factors as I have to do, I find that the aggravating features considerably outweigh the available mitigation. The appropriate minimum term that you must serve is one of 18 years imprisonment.

-ENDS-